

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, the phrase, "without using an attaching mechanism" renders the claims unclear and confusing. Applicant has stated that the cushions are joined without an attaching mechanism but then positively recites various attachment mechanisms in the depending claims.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

- Claims 1-2,8-16,18,19 as best understood are rejected under 35 U.S.C. 102(b) as being anticipated by Glydon. Glydon shows a multi-sectional novelty device seat cushion, comprising: a plurality of seat cushion sections (12), including at least a first seat cushion section and a second seat cushion section; which interlock together without an attaching mechanism i.e., adhesive, hook and loop fasteners, fabric ties, temporary adhesive and a zipper, wherein the first seat cushion section includes a non-linear first border, wherein the second seat cushion section includes a non-linear second border, wherein the first border and the second border tessellate

(see Fig. 3), wherein the attaching medium (20,22) is affixed to the first seat cushion section at the first border. Glydon shows that the border has a zigzag pattern and or a curved pattern based on the rounded edges of the dovetails.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3-4,6,7,17 as best understood are rejected under 35 U.S.C. 103(a) as being unpatentable over Glydon in view of Merritt. Glydon shows all of the teachings except the use of a handle or ergonomic hand grip and a circular cushion. Merritt shows the use conventional use of a handle (16) on a circular seat cushion (10). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the seat cushion of Glydon with the teachings, of Merritt in order to allow a user better convenience to transport the seat cushion as well as a user to form more curved structures. The cushions inherently may be used for cheering.
6. Claim 5 as best understood is rejected under 35 U.S.C. 103(a) as being unpatentable over Glydon in view of Marrero. Glydon shows all of the teachings except the use of a carrying strap. Marrero shows the use conventional use of a carrying strap (16) on a seat cushion (10). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the

seat cushion of Glydon with the strap, of Marrero in order to allow a user to transport the seat cushion easily.

7. Claim 20 and 22 as best understood are rejected under 35 U.S.C. 103(a) as being unpatentable over Glydon. Glydon shows all of the teachings except the cushion having a size of 14 inches by 14 inches and formed from polyurethane foam. It would have been an obvious matter of design choice to modify the cushion to measure 14 inches by 14 inches since it has been held that a mere change in size is within the scope of ordinary skill in the art. *In re Rose 1963*. Furthermore it would have been an obvious matter of design choice to modify the cushion from polyurethane foam since applicant has not disclosed that a polyurethane foam cushion solves any stated problem and it appears that the polyethylene foam cushion of Glydon would perform equally well.

#### ***Response to Arguments***

8. Applicant's arguments filed 11/2/07 have been fully considered but they are not persuasive. In response to applicant's argument that Glydon uses "interlocking" which is an attachment mechanism, the examiner is of the position that the cushions of the claimed invention "interlock" and engage each other. Furthermore, as defined by the dependent claims Glydon does not use those claimed attachment mechanisms to join together to corresponding cushions. The examiner maintains the position that so far as defined by the claimed invention Glydon shows two cushions which are joined and tessellate together by simply lining them and engaging them together.

***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony D. Barfield whose telephone number is 571-272-6852. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3636

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Anthony D Barfield/  
Primary Examiner, Art Unit 3636

adb  
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